

DRAWINGS CAN BE USED AS PRIOR ART

Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. In re Mraz, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972). However, the picture must show all the claimed structural features and how they are put together. Jockmus v. Leviton, 28 F.2d 812 (2d Cir. 1928). The origin of the drawing is immaterial. For instance, drawings in a design patent can anticipate or make obvious the claimed invention as can drawings in utility patents. When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. In re Aslanian, 590 F.2d 911, 200 USPQ 500 (CCPA 1979). See MPEP § 2121.04 for more information on prior art drawings as "enabled disclosures."

PROPORTIONS OF FEATURES IN A DRAWING ARE NOT EVIDENCE OF ACTUAL PROPORTIONS WHEN DRAWINGS ARE NOT TO SCALE

When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See Hockerson-Halberstadt, Inc. v. Avia Group Int'l, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. "[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue."). However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. In re Wright, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977) ("We disagree with the Solicitor's conclusion, reached by a comparison of the relative dimensions of appellant's and Bauer's drawing figures, that Bauer clearly points to the use of a chime length of roughly 1/2 to 1 inch for a whiskey barrel.' This ignores the fact that Bauer does not disclose that his drawings are to scale. ... However, we agree with the Solicitor that Bauer's teaching that whiskey losses are influenced by the distance the liquor needs to traverse the pores of the wood' (albeit in reference to the thickness of the barrelhead)" would have suggested the desirability of an increased chime length to one of ordinary skill in the art bent on further reducing whiskey losses." 569 F.2d at 1127, 193 USPQ at 335-36.)